IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 976 of 2005.

Decided on: 30.07.2007.

State of H.P. and Others. … … Petitioners.

Versus

Mukesh Kumar. … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioners:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For the Respondent:	**Mr. Ashwani Pathak, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, dated 21.5.2005 in reference No.40/2002 (RBT No.241/04).

The brief facts of the case are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal:-

> **"Whether the verbal termination w.e.f. 2/99 of Sh. Mukesh Kumar S/o Sh. Baldev Ram daily wage Beldar by the Executive Engineer, H.P.P.W.D. Division Saluni Distt. Chamba and practice of**

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

giving intermittent breaks during the period 1.7.1995 to 2/99 is legal and justified? If not, to what seniority, service benefit and relief the concerned workman is entitled to."

In sequel to the reference made by the State, the respondent (hereinafter referred to as the workman for convenience sake) had filed the statement of claim before the Labour Court. The workman had primarily contended before the Labour Court that he was engaged as beldar on daily wages basis in the month of July, 1995 and had been permitted to discharge his duties with artificial breaks upto February, 2001 and he has been retrenched with effect from February, 2001 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The employer had filed reply to the statement of claim and had denied that the workman had ever completed 240 days preceding 12 calendar months. The workman had filed a rejoinder to the reply filed by the employer. The workman had given the names of three persons who were junior to him, but were retained by the employer at the time of effecting his retrenchment in the month of February, 2001. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative.

The learned Advocate General had strenuously argued that the workman had not completed 240 days preceding 12 calendar months at the time of his retrenchment and the Labour Court had come to the wrong conclusion that the workman will be deemed

to have completed 240 days. Mr. Ashwani Pathak had supported the award dated 21.5.2005.

I have heard the parties and perused the record.

It is evident from the man-days chart annexed with this petition that the workman had not completed 240 days in 12 calendar months preceding his retrenchment, i.e. February, 2001. The Labour Court had come to the wrong conclusion that the workman will be deemed to have completed 240 days. This finding accordingly is liable to be interfered with.

The second issue which requires consideration of the Court is whether the workman is entitled to get the protection of Section 25-G of the Act or not. In the statement of claim the workman had specifically averred that there was violation of the principle of "last come first go". He had given the names of three persons, i.e. Dharmender, Suresh and Bhanu, who according to him were junior to him, but were retained while retrenching the working in the month of February, 2001. The employer had produced RW-1 Shri P.C. Matlotia, who had admitted that two persons, namely, Dharmender and Suresh were permitted to work at the time when the respondent-workman was retrenched though both of them were junior to him. It is settled-law by now that the workman need not complete 240 days in a whole year for getting the protection under Section 25-G of the Act. The Hon'ble Supreme Court in ***Central Bank of India Versus S. Satyam and Others, (1996) 5 SCC 419*** has held as under:-

> **"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen".**

The ordinary meaning of the expression "retrenched workman" must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman … who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman … who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of 'last come first go' which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

Similarly, the Apex Court has held in ***Samishta Dube Versus City Board, Etawah and another, 1999 (2) SLR 51*** that the principle of "last come first go" should ordinarily be followed

even in the case of daily wagers. Their Lordships have held as under:-

> **"We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf – the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6(N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh vs. Presiding Officer (1986 Suppl. SCC 679) in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India vs. S. Satyam and Others 1996(5) SCC 419) : [1996(4) SLR 695(SC)].**
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> **Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6P**

of the U.P. Act read with Section 2(z) of the U.P. Act which defines 'workman'.

It is true that the rule of 'first come, last go' in Section 6-P could be deviated from by an employer because the section uses the word 'ordinarily'. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or less of confidence etc. as held in M/s. Swadesmitran Limited, Madras vs. Their Workmen (1960 (3) SCR 144). But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act."

Accordingly, the award dated 21.5.2005 is modified to the effect that – (i) the finding recorded by the Labour Court that the workman had completed 240 days preceding 12 calendar months at the time of his retrenchment is set aside. (ii) The finding recorded by the Labour Court that the workman was entitled to protection of Section 25-G of the Act is up-held. Consequently, the respondents are directed to re-instate the workman with 50% back wages. The workman will also be entitled to the seniority for the period of his absence.

The petition stands disposed of with no order as to costs.

(Rajiv Sharma) Judge.

July 30, 2007.
(sck)